

Equal Employment Opportunity (EEO)
DISCRIMINATION COMPLAINTS SYSTEM

DA Regulation 690-600, Equal Employment Opportunity Discrimination Complaints, sets policies and procedures on filing, processing, investigating, and settling complaints of discrimination.

WHO MAY FILE A COMPLAINT? Any employee, former employee, an applicant or contract employees under certain conditions, who feels s/he has been illegally discriminated against because of the following prohibited bases may file a complaint:

- ❖ Race
- ❖ Color
- ❖ Sex
- ❖ Religion
- ❖ National Origin
- ❖ Age (Over 40)
- ❖ Mental or Physical Disability
- ❖ Reprisal (based on previous EEO Activity)

The complainant must identify the basis for the complaint and identify the adverse action(s) [issue(s)] they have suffered leading to the complaint. Discrimination may arise from a specific action or from an ongoing policy or practice. Examples may include:

- ❖ Failure to be promoted (hired)
- ❖ Failure to be selected for training
- ❖ Disciplinary action
- ❖ Termination
- ❖ Performance appraisal

If the alleged discriminatory action was perpetrated by an individual(s) rather than a system or organization, the complainant will identify that individual(s), as the Responsible Management Official (RMO).

As a part of her/his complaint, the complainant may request relief that is appropriate considering the nature of the alleged discrimination. Relief is identified as that which would make the complainant "whole"; i.e., what the complainant would have had if there had not been discriminatory actions taken against her/him. Examples include:

- ❖ Retroactive promotion/back pay for the position in question
- ❖ Special consideration for promotion to the level/type position in question
- ❖ Assignment to training
- ❖ Rescind disciplinary action Reinstatement employee
- ❖ Reclassification of position

Complaints will be processed promptly and impartially and with due respect for the rights of persons against whom allegations have been made.

INFORMAL COMPLAINTS: THE FIRST STEP

Traditional Processing

The first step in the complaint system is the filing of an informal complaint of discrimination. The aggrieved must contact an EEO official within **45 calendar days** of the adverse action (or alleged discriminatory action), giving rise to the complaint. If the matter is not a specific action, but an ongoing policy or practice, it must have been in effect within **45 calendar days** of contact with the EEO official.

A complainant need not furnish "proof" of discrimination in order to file a complaint. It is sufficient for the complainant to demonstrate that s/he has been adversely affected, and have a reason to believe that the adverse action is because of race, color, religion, sex, age, national origin, disability, or reprisal.

If the aggrieved so wishes, her/his name can be kept confidential during the informal stage; however, this can hinder the EEO counselor in obtaining facts. A counselor will be assigned to your case and will initiate a 30 -calendar day period during which the counselor will attempt to reach an informal resolution of the complaint. The EEO official will talk with the aggrieved to determine the nature and background of the complaint and the relief desired. The aggrieved will be asked to complete, sign, and date a form detailing this information. Depending on the matter, the EEO official may research regulations, review personnel records, statistical information and interview witnesses and the Management Official. The counselor will present findings to both parties and determine whether a mutually acceptable informal resolution of the complaint is possible. If so, terms of the resolution will be documented and presented to the aggrieved and the Responsible Management Official by an EEO official.

The complainant and Responsible Management Official (s) are entitled to present evidence, name witnesses, and have representatives of their choice during all stages of the complaint process. However, no staff member of the EEO Office or Civilian Personnel Directorate may serve as a representative for either party.

A counselor's report is submitted to the EEO Officer. This report details the counselor's efforts to reach an informal resolution and her/his findings and recommendations.

Alternative Dispute Resolution (ADR). DAs preferred method of ADR is mediation. Participation in mediation is voluntary for the aggrieved person and mandatory for the designated Responsible Management Official. The aggrieved person may terminate mediation at any time.

The mediator has no authority to make decisions on issues raised or act as an advocate or attorney for either party. The aggrieved person has the right to representation during the EEO process. However, the mediator will determine if the designated representative can be present during mediation.

The aggrieved person understands that s/he has the right to pursue these issues through the complaint process, if applicable.

FORMAL COMPLAINT: THE SECOND STEP

Filing a Complaint. If a resolution is not reached within **30 calendar days**, the EEO counselor, must, on or before the 30th day, give written notice to the aggrieved of the right to file a formal complaint. If needed, the aggrieved may grant the EEO Counselor an extension up to an additional **60 calendar days** to complete the inquiry, but it is not mandatory. In order to exercise the right to file a formal complaint, the aggrieved must file within 15 calendar days of receipt of the Notice of Final Interview with the counselor. Upon filing of a formal complaint, the aggrieved becomes known as the complainant. A formal complaint must be dated and signed by the complainant, and preferably should be submitted on DA Form 2590-R, which is available at any EEO Office. A formal complaint must be submitted, either in person or by mail, to one of the following:

The Installation Equal Employment Office	or	EEOCCR ATTN: SAMR-SFECR 1901 South Bell Street Crystal Mall 4, Room 109-B Arlington, VA 22202-4508
---	----	--

Accepting or Dismissing a Complaint. The EEO Officer has the authority to accept or dismiss a formal complaint. The authority to dismiss the complaint occurs in situations where:

- (a) It fails to state a claim or states the same claim that is pending before or has been decided by the agency or Commission;
- (b) It fails to comply with the applicable time limits contained, unless the agency extends the time limits, or that raises a matter that has not been brought to the attention of a counselor and is not like or related to a matter that has been brought to the attention of a counselor;
- (c) It is the basis of a pending civil action in a United States District Court in which the complainant is a party that at least **180 calendar days** have passed since the filing of the administrative complaint, or that was the basis of a civil action decided by a United States District Court in which the complainant was a party;
- (d) The complainant has raised the matter in a negotiated grievance procedure that permits allegations of discrimination or in an appeal to the Merit Systems Protection Board;
- (e) It is moot or alleges that a proposal to take a personnel action, or other preliminary step to taking a personnel action, is discriminatory;
- (f) The complainant cannot be located, provided that reasonable efforts have been made to locate the complainant and the complainant has not responded within **15 calendar days** to a notice of proposed dismissal sent to his or her last known address;

(g) The agency has provided the complainant with a written request to provide relevant information or otherwise proceed with the complaint, and the complainant has failed to respond to the request within **15 calendar days** of its receipt or the complainant's response does not address the agency's request, provided that the request included a notice of the proposed dismissal;

(h) It alleges dissatisfaction with the processing of a previously filed complaint; and

(i) The agency finds that the complaint is part of a clear pattern of misuse of the EEO process for a purpose other than the prevention and elimination of discrimination.

When the complaint is accepted, the Management Official(s) are informed of the complainant's identity regardless of whether anonymity was previously requested. At this point, the complainant receives a copy of the Counselor's Report.

Investigating the Complaint. A formal complaint will lead to an on-site investigation, which is conducted by the Civilian Personnel Management Service, Investigations & Resolutions Division (IRD). The IRD investigator takes affidavits/testimony from the complainant and other witnesses and gathers evidence about the complaint. This can be in the form of mediation or fact-finding investigation. IRD will forward a Report of Investigation (ROI) to the EEO Officer.

Hearing and Recommended Decision. If the complainant is dissatisfied with the recommendation, s/he may exercise further complaint rights. In order to exercise these rights, the complainant must make one of the following requests in writing within **30 calendar days** of receipt of the ROI of the discrimination complaint:

(a) Request a hearing before an Administrative Judge (AJ) designated by the Equal Employment Opportunity Commission (EEOC), with subsequent decision by the Army Director of EEO.

If a request for an EEOC hearing is submitted. The AJ hears relevant testimony and considers documentary evidence about the allegations. Witnesses give testimony under oath or affirmation and can be cross-examined. The AJ submits her/his findings and a recommended decision to the head of the employing agency.

The employing agency issues its final decision either accepting, modifying, or rejecting EEOC's recommended decision. A verbatim transcript of the hearing and a copy of the AJ's recommended action accompany the final decision.

(b) Request a decision by the Army Director of EEO without a hearing. Decision will be based on the record as it stands.

Either of the above requests should be in the form of a letter addressed to the EEO Officer.

If the complainant does not reply within the required time frame (**30 calendar days after receipt of ROI**), the EEO Officer will submit the entire case file to the Army Director of EEO for a Final Army Decision (FAD) on the merits of the complaint or on record as it stands.

Appealing to EEOC. If the complainant is dissatisfied with the final decision of DA (after an EEOC hearing or without an EEOC hearing), s/he may appeal to the EEOC Office of Federal Operations (OFO) within **30 calendar days** of receipt of that decision. The appeal and any supportive materials must be submitted in duplicate to the OFO within **30 calendar days** thereafter. A copy of the appeal and documentation should be submitted to the EEO Officer.

Right to File Civil Action. Except in cases of age discrimination (see page 10), a complainant is authorized by Section 717c of the Civil Rights Act of 1964, as amended, to file a civil suit in an appropriate U.S. District Court:

- (a) Within **30 calendar days** of receipt of notice of final action taken by the employing agency on the complaint; or
- (b) After **180 calendar days** from the date of filing a complaint with the agency if there has been no final agency decision; or
- (c) Within **30 calendar days** after receipt of notice of final action taken by EEOC on the complainant's appeal; or
- (d) After **180 calendar days** from the date of filing an appeal with EEOC when there has been no EEOC decision.

Freedom from Reprisal. The complainant has a right to be free from restraint, interference, coercion, discrimination, or reprisal because of their EEO involvement.

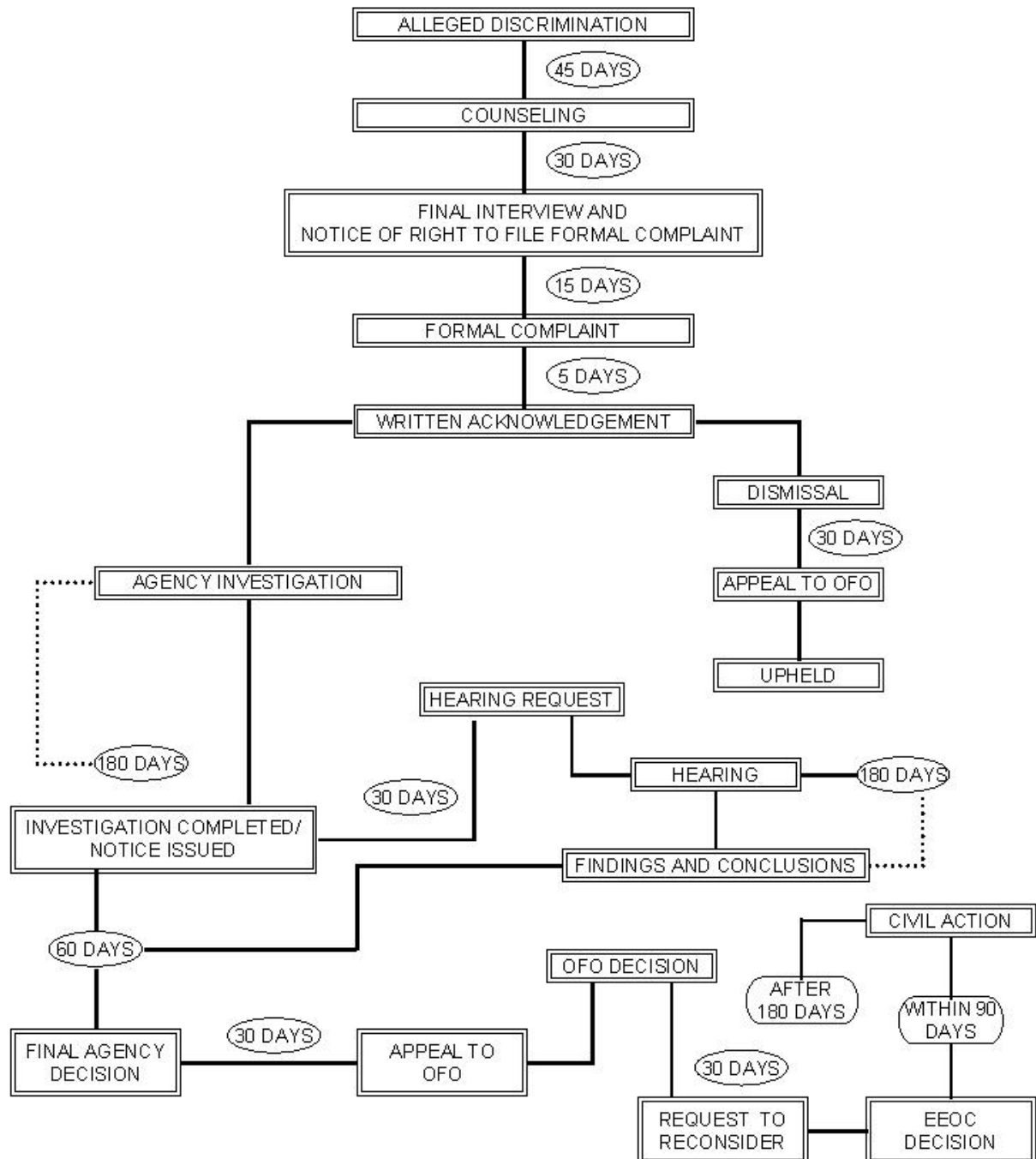
Except in cases of age discrimination, a complainant may recover reasonable attorney's fees and costs if s/he prevails in the administrative process. To recoup attorney's fees, the name, address and date on which the attorney was retained must be provided to the EEO Office in writing at the time the attorney is hired.

SPECIAL PROCEDURES FOR AGE DISCRIMINATION

Regulations regarding allegations of age discrimination are unique because the complainant can choose between two different procedures. Instead of first filing a complaint with the employing agency, a complainant may go directly to U.S. District Court after first giving the EEOC no less than **30 calendar days** notice of intent to file suit about an action which occurred within the previous **180 calendar days**. If the complainant chooses to file a complaint of age discrimination with the employing agency, s/he must complete all steps of the process previously outlined before s/he can file in a U.S. District Court.



FEDERAL SECTOR COMPLAINT PROCESSING SYSTEM



NOTES: EEOC - Equal Employment Opportunity Commission
OFO - Office of Federal Operations